

tor plaintiffs, who, having a common interest, have therefore been permitted, or required to come in and make common cause in the pursuit of their claims; yet as to the defendant debtor, or his representatives, who hold the fund upon which the charge is made, the case is very different. It is obviously the interest of such defendants to have every unsound claim rejected; because, after all the creditors are satisfied, they are entitled to the surplus. And **341** * even where there may not be a sufficiency to satisfy all the creditors; it is a duty which such defendants owe to the just creditors of their testator or intestate ancestor or deviser, as well as to themselves, to make all proper disclosures, and to assist in having a fair distribution made by excluding all unfounded claims, so that those only which are clearly valid may obtain the full dividend to which they are entitled.

In this case, therefore, if it be true that William S. Cochran is now dead, it is evident that no further proceedings can be had until his legal representatives have been made parties.

Whereupon it is ordered, that this case stand over until further order.

After which the plaintiffs, by their petition, stated, that William S. Cochran made his will, by which he appointed William H. Freeman his executor, and died. Whereupon they prayed, that a subpoena might issue, &c. And it appearing from the proceedings, that the real estate which descended to the said William S. Cochran, had been converted into personalty; it was thereupon ordered, that a *subpoena scire facias* issue against the said Freeman as prayed; which being returned summoned, the suit was ordered to stand revived in all respects against him; and was thereafter prosecuted to a conclusion.

SIMMONS v. TONGUE.

CREDITOR'S SUITS.—SALES.—PROOF OF CLAIMS.—PRINCIPAL AND SURETY.

On the petition of a widow in a creditor's suit, a commission may be issued to assign her dower.

Another person may be admitted as a purchaser in place of him who was reported as such.

After the sale has been ratified, and the purchase money has become due, the purchaser, and his sureties, may be ordered to pay; and, on their failing to do so, the land may be re-sold at the risk of the purchaser.

Where it appears, in a creditor's suit, that there is any personal estate left, the executor or administrator should be decreed to account.

A decree for a sale establishes the whole or a part of the plaintiff's claim. (a)

(a) See *Hammond v. Hammond*, 2 Bland, 306, note.